

1 LAURA E. DUFFY  
 United States Attorney  
 2 WILLIAM P. COLE  
 CAROLINE P. HAN  
 3 Assistant U.S. Attorneys  
 California State Bar Nos. 186772/250301  
 4 Federal Office Building  
 880 Front Street, Room 6293  
 5 San Diego, California 92101-8893  
 Telephone: (619) 557-7859/557-5220  
 6 William.P.Cole@usdoj.gov  
 Caroline.Han@usdoj.gov

7 Attorneys for Plaintiff  
 8 United States of America

9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11	UNITED STATES OF AMERICA,	)	Case No. 10CR4246-JM
12	Plaintiff,	)	
13	v.	)	JOINT STATUS REPORT ON
14		)	DEFENDANTS' DIRECT ACCESS
15	BASAALY SAEED MOALIN, et al.,	)	TO SENSITIVE DISCOVERY
16	Defendants.	)	MATERIALS
17		)	

18 Plaintiff United States of America and defendants  
 19 Basaaly Saeed Moalin, Mohamed Mohamed Mohamud, Issa  
 20 Doreh, and Ahmed Nasir Taalil Mohamud hereby jointly file  
 21 a status report on defendants' direct access to sensitive  
 22 discovery materials.

23 **BACKGROUND**

24 Much of the discovery in this case consists of audio  
 25 recordings of intercepts authorized under the Foreign  
 26 Intelligence Surveillance Act of 1978 ("FISA"), as well as  
 27 translations of certain portions of the audio recordings.  
 28 On January 3, 2011, United States District Judge Jeffrey T.

1 Miller issued a protective order governing the dissemination  
2 of such audio recordings and transcripts. [Docket No. 34.]  
3 The protective order provided that "defense counsel shall  
4 store all sensitive discovery materials, and any copies  
5 thereof, in a secure place[.]" [Id.]

6 Defense counsel suggested that, in order for the  
7 defendants to review the voluminous audio recordings in an  
8 efficient manner, there should be a mechanism by which the  
9 defendants could directly access the audio recordings (and  
10 translations thereof) within the detention facilities  
11 without always requiring the presence of defense counsel or  
12 a defense investigator.

13 On February 22, 2011, United States Magistrate Judge  
14 Gallo held a hearing to address this issue. Judge Gallo  
15 continued the hearing to March 10, 2011, directing defense  
16 counsel and the Government to confer further concerning the  
17 issue and to provide a joint status report to the Court by  
18 March 8, 2011.

#### 19 **STATUS REPORT**

20 Increasing the defendants' direct access to the audio  
21 FISA information and translations involves three components:  
22 (1) revising the protective order; (2) determining what type  
23 of access the detention facilities will authorize; and (3)  
24 securing appropriate equipment, if necessary, for the  
25 defendants to listen to the audio calls.

#### 26 **A. Amended Protective Order**

27 On February 25, 2011, Judge Miller issued an amended  
28 protective order providing that "defense counsel are

1 authorized to provide copies of the audio FISA information,  
2 and translations thereof, for review by the defendant at the  
3 facility where the defendant is detained outside the  
4 presence of counsel." [Docket No. 56.] The amended  
5 protective order provides that the defendants shall comply  
6 with all protocols and procedures established by the  
7 facilities for accessing, reviewing and securing the copies  
8 when they are not being used by the defendants.<sup>1/</sup>

9 Accordingly, the protective order now provides a  
10 framework for direct access by the defendants, subject to  
11 procedures established by the detention facilities.

12 **B. Access at the Detention Facilities**

13 The Government has conferred with representatives of  
14 the Metropolitan Correctional Center and GEO Detention  
15 Center. As described below, each facility has agreed to  
16 provide the defendants with substantial, direct access to  
17 the audio recordings and translations.

18 **1. Metropolitan Correctional Center**

19 Defendants Mohamed Mohamed Mohamud and Ahmed Nasir  
20 Taalil Mohamud are currently housed at the Metropolitan  
21 Correctional Center (MCC). MCC representatives have advised  
22 the Government that these defendants will be granted joint  
23 access to discovery on a computer in the library for up to  
24 24 hours a week, when the library is open to male inmates.  
25 Mohamud and Nasir also may choose to split the access time.

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26 <sup>1/</sup> The amended protective order also provides that the  
27 defendant shall not copy the audio FISA information, or  
28 translations thereof, or otherwise make such materials or  
any portion thereof available to anyone not a party to this  
matter.

1 The defendants may obtain the discovery discs and  
2 transcripts from MCC's Education Services department, which  
3 will keep and maintain them. The Government will provide  
4 a set of the already discovered discs and transcripts to the  
5 MCC on or about March 11, 2011.

## 6           **2.    GEO**

7           Defendants Basaaly Moalin and Issa Doreh are housed at  
8 GEO. GEO's representative has advised the Government that  
9 there are two options for providing these defendants with  
10 substantial, direct access to the audio recordings and  
11 translations. First, if the defense or the Court will  
12 provide a dedicated laptop for this purpose, defendants  
13 Moalin and Doreh will be provided joint access to the  
14 discovery in an attorney visitor room from 4:00 a.m. to 8:00  
15 a.m. daily. These defendants also may choose to split the  
16 access time. Alternatively, if no computer is available for  
17 this purpose, then GEO has offered to give the defendants  
18 access to the discovery on the law library computer from  
19 midnight to 4:00 a.m. every day, when other inmates are not  
20 present. Kenneth Troiano, counsel for Issa Doreh, has  
21 proposed alternative hours for the access time. That  
22 proposal has been shared with GEO, and a response is  
23 awaited.

## 24           **3.    Laptop for GEO**

25           MCC has advised that it has the necessary equipment to  
26 support this special discovery access for defendants Mohamud  
27 and Nasir. As noted, however, GEO does not have a dedicated  
28 laptop for defendants Moalin and Doreh to have access from

1 4 a.m. to 8 a.m. each day.

2 Kenneth Troiano has made an inquiry to determine if CJA  
3 funds can be used to pay for the computer, which the parties  
4 view as an inexpensive way to increase discovery access and  
5 substantially decrease attorney and investigator costs.

6  
7 Dated: March 8, 2011

8 Respectfully submitted,

9 LAURA E. DUFFY  
10 United States Attorney

11 s/Caroline P. Han  
12 CAROLINE P. HAN  
13 WILLIAM P. COLE  
14 Assistant U.S. Attorneys

15 Attorneys for Plaintiff  
16 United States of America

17 Marc B. Geller, APC

18 s/ Marc B. Geller  
19 MARC B. GELLER

20 Attorney for Defendant  
21 Basaaly Saeed Moalin

22 Law Office of Mahir T. Sherif

23 s/ Mahir T. Sherif  
24 MAHIR T. SHERIF

25 Attorney for Defendant  
26 Mohamed Mohamed Mohamud

27 Law Office of Kenneth Troiano

28 s/ Kenneth J. Troiano  
KENNETH J. TROIANO

Attorney for Defendant  
Issa Doreh

Law Offices of Holly S. Hanover

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s/Holly S. Hanover  
HOLLY S. HANOVER

Attorney for Defendant  
Ahmed Nasir Taalil Mohamud

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Case No. 10CR4246-JM
	)	
Plaintiff,	)	
	)	
v.	)	
	)	CERTIFICATE OF SERVICE
BASAALY SAEED MOALIN et al.,	)	
	)	
Defendants.	)	

IT IS HEREBY CERTIFIED THAT:

I, CAROLINE P. HAN, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of Joint Status Report on Defendants' Access to Discovery on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Marc Geller  
Attorney for defendant Moalin
2. Mahir Sherif  
Attorney for defendant Mohamed Mohamed Mohamud
3. Kenneth Troiano  
Attorney for defendant Doreh
4. Holly Hanover  
Attorney for defendant Ahmed Nasir Taalil Mohamud

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 8, 2011.

s/Caroline P. Han  
CAROLINE P. HAN